

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Frank Garlando,)	
)	CASE NO. 5:08 CV 1940
Petitioner-Defendant,)	(Criminal Case No. 5:04 CR 340)
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
United States of America,)	
)	
Respondent-Plaintiff.)	
)	

I. Introduction

By order dated January 8, 2009 the Court vacated its order of December 24, 2008 following the discovery that the petitioner had posted his response to the government's brief (Docket No. 49) in support of a denial of the petitioner's *pro se* petition for habeas relief from his conviction and sentence to a term of imprisonment for a period of 180 months. However, the Court did not vacate its memorandum opinion of December 24, 2008 (Docket No. 47), so the declarations of fact and the Court's reasoning as set forth in that memorandum opinion remain intact and will not be repeated in this memorandum opinion.

The government's subsequent response filed on February 17, 2009 (Docket No. 53) continues to stand on the proposition that the defendant's petition was filed significantly beyond the one year limitation for the filing of habeas motions for relief. Continuing, the government contends that the petitioner has failed to show in this latest pleading filed on December 29, 2008 (Docket No. 49) any good cause to justify a tolling of the relevant statute of limitations. After reviewing the petitioner's brief filed on December 29, 2008, the Court agrees.

(5:08 CV 1940
Criminal Case No. 5:04 CR 340)

Consequently, and consistent with the reasoning set forth in the Court's opinion filed on December 24, 2008 (Docket No. 47), the petitioner's motion for a writ pursuant to the provisions of § 2255 is denied.

The Court will publish a separate entry denying the writ and will deny a certificate of appealability.

IT IS SO ORDERED.

March 2, 2009
Date

/s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge